This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

**Usage guidelines**

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

**About Google Book Search**

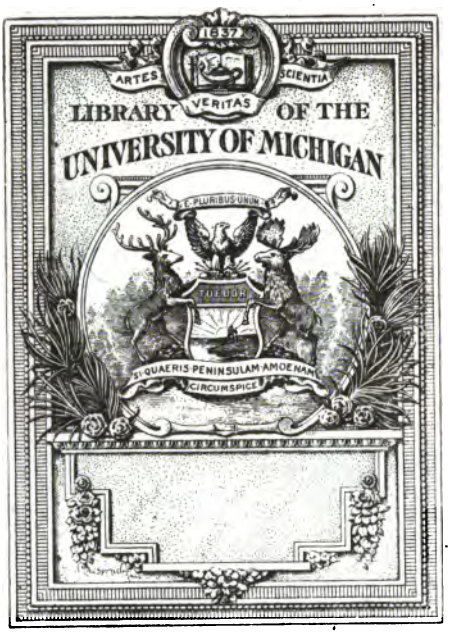
Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

HD
7816
.U7
W2
1912

B 446985

STORAGE
H2 v.2

State of Washington— Workmen's compensation act


ARTES
VERITAS
SCIENTIA
LIBRARY OF THE
UNIVERSITY OF MICHIGAN
E PLURIBUS UNUM
SI QUAERIS PENINSULAM AMOENAM
CIRCUMSPICE

HD
7816
.U7
W2
1912

# WORKMEN'S COMPENSATION ACT

OF THE

# STATE OF WASHINGTON.

[CHAPTER 74, SESSION LAWS OF 1911]

WITH NOTES

ISSUED BY THE

## INDUSTRIAL INSURANCE COMMISSION

CREATED BY SAID ACT

OLYMPIA, WASH.
E. L. BOARDMAN, PUBLIC PRINTER.
JANUARY, 1912.

# INTRODUCTORY.

The Workmen's Compensation Act affects thousands of employers, scores of thousands of workmen and all the taxpayers of the State. The department created to administer it herewith presents the law, with notes and analyses, to aid in making clear the legislative intent and administrative policy.

The law was intended to operate without recourse to the courts and trained practitioners of law. The notes are, therefore, prepared for laymen rather than lawyers.

This act was attacked as unconstitutional on four distinct grounds: (1) In depriving persons of property without due process of law; (2) in granting citizens, classes of citizens or private corporations privileges or immunities not clearly available upon the same terms to all citizens and corporations; and in denying them the equal protection of the laws; (3) in providing a species of taxation that is not equal and uniform; and (4) in abolishing the right of jury trial in determining compensation for personal injuries. However, the supreme court of the State by practically unanimous decision held on September 27, 1911, "that the act violates no provision of either the State or Federal constitutions." (*State ex rel. Davis-Smith Co. v. Clausen*, 23 Wash. Dec. 27, 117 Pac. Rep. 1101.)

While provided with legal machinery for enforcement of this new law (and the legislature doubtless thought $150,000.00 ample funds), it is no reflection on the dignity of the State of Washington for this Commission to solicit the study, understanding and co-operation of all citizens that this social legislation may have a fair trial in practice. As the pioneer compulsory state insurance law in the United States, the experiment is being watched critically and expectantly in the other American states. Among the results its framers hoped it would accomplish are the following:

1. Furnish certain, prompt and reasonable compensation to the victims of work accidents and their dependents, eighty per cent. of whom have heretofore had no right to redress under common law rules.

263510

2. Free the courts from the delay, cost and criticism incident to the great mass of personal injury litigation heretofore burdening them.

3. Relieve public and private charity of much of the destitution due to uncompensated industrial accidents.

4. Eliminate economic waste in the payments to unnecessary lawyers, witnesses and casualty corporations and the expense and time loss due to trials and appeals.

5. Provide a method whereby one hundred cents shall go to the injured workman out of every dollar paid out by the employer for that purpose, premium rates automatically adjusted to actual cost.

6. Supplant concealment of fault in accidents by a spirit of frank study of causes; resulting in good will between employer and operative, lessening the number of preventable accidents, and reducing the cost and suffering thereby.

7. Home rule of compensation funds, same being invested in bonds of Washington municipalities, etc., instead of being drained out of the State by premium remittances to eastern financial centers.

8. State control of statistical information and education in accident prevention.

Following the text of the act will be found appendices, viz.:

I. Report of the Investigation Commission.
II. The Proposed First Aid Fund.
III. Alphabetical Index of Classes and Rates.

Respectfully submitted,

CHARLES A. PRATT,
J. H. WALLACE,
HAMILTON HIGDAY,
*Commissioners.*

# WORKMEN'S COMPENSATION ACT.

## Chapter 74, Laws of 1911.

[H. B. 14]

AN ACT relating to the compensation of injured workmen in our industries, and the compensation to their dependents where such injuries result in death, creating an industrial insurance department, making an appropriation for its administration, providing for the creation and disbursement of funds for the compensation and care of workmen injured in hazardous employment, providing penalties for the non-observance of regulations for the prevention of such injuries and for violation of its provisions, asserting and exercising the police power in such cases, and, except in certain specified cases, abolishing the doctrine of negligence as a ground for recovery of damages against employers, and depriving the courts of jurisdiction of such controversies, and repealing sections 6594, 6595 and 6596 of Remington and Ballinger's Annotated Codes and Statutes of Washington, relating to employes in factories, mills or workshops where machinery is used, actions for the recovery of damages and prescribing a punishment for violation thereof.

*Be it enacted by the Legislature of the State of Washington:*

SECTION 1. *Declaration of Police Power.*

The common law system governing the remedy of workmen against employers for injuries received in hazardous work is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the workman and that little only at large expense to the public. The remedy of the workman has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the State depends upon its industries, and even more upon the welfare of its wage-worker. The State of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extra hazardous work, and their families and dependents is hereby provided regardless of questions of

Declaration.

Exercise police powers.

fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the State over such causes are hereby abolished, except as in this act provided.

The abolishing of jurisdiction of courts over personal injury claims applies only to those in the relation of employer and employe in "extra hazardous" occupations. Employes as members of the public have their rights against third persons as heretofore. Suits allowed against employer, see Sec. 8. Even though the injury or death be caused by the tort of a third person, the employe may obtain compensation by election and assignment, except where a wilful act of such other, committed against the employe, be for reasons personal and not because of his employment.

SEC. 2. *Enumeration of Extra Hazardous Works.*

There is a hazard in all employment, but certain employments have come to be, and to be recognized as being inherently constantly dangerous. This act is intended to apply to all such inherently hazardous works and occupations, and it is the purpose to embrace all of them, which are within the legislative jurisdiction of the State, in the following enumeration, and they are intended to be embraced within the term "extra hazardous" wherever used in this act, to-wit:

Extra-hazardous employment.

Factories, mills and workshops where machinery is used; printing, electrotyping, photo-engraving and stereotyping plants where machinery is used; foundries, blast furnaces, mines, wells, gas works, waterworks, reduction works, breweries, elevators, wharves, docks, dredges, smelters, powder works; laundries operated by power; quarries; engineering works; logging, lumbering and ship building operations; logging, street and interurban railroads; buildings being constructed, repaired, moved or demolished; telegraph, telephone, electric light or power plants or lines, steam heating or power plants, steamboats, tugs, ferries and railroads. If there be or arise any extra hazardous occupation or work other than those hereinabove enumerated, it shall come under this act, and its rate of contribution to the accident fund hereinafter established, shall be, until fixed by legislation, determined by the department hereinafter created, upon the basis of the relation which the risk involved bears to the risks classified in section 4.

Admiralty Jurisdiction, see Sec. 18.

Unlisted extra hazardous occupations will be included in existing classes whenever possible. Obviously, accidents in new and small classes might bankrupt employers included therein. Non-hazardous elective, Class 48.

SEC. 3. *Definitions.*

In the sense of this act words employed mean as here stated, to-wit: Defining terms.

Factories mean undertakings in which the business of working at commodities is carried on with power-driven machinery, either in manufacture, repair or change, and shall include the premises, yard and plant of the concern.

Workshop means any plant, yard, premises, room or place wherein power-driven machinery is employed and manual labor is exercised by way of trade for gain or otherwise in or incidental to the process of making, altering, repairing, printing or ornamenting, finishing or adapting for sale or otherwise any article or part of article, machine or thing, over which premises, room or place the employer of the person working therein has the right of access or control. Workshop.

Mill means any plant, premises, room or place where machinery is used, any process of machinery, changing, altering or repairing any article or commodity for sale or otherwise, together with the yards and premises which are a part of the plant, including elevators, warehouses and bunkers. Mill.

Mine means any mine where coal, clay, ore, mineral, gypsum or rock is dug or mined underground. Mine.

Quarry means an open cut from which coal is mined, or clay, ore, mineral, gypsum, sand, gravel or rock is cut or taken for manufacturing, building or construction purposes. Quarry.

Engineering work means any work of construction, improvement or alteration or repair of buildings, structures, streets, highways, sewers, street railways, railroads, logging roads, interurban railroads, harbors, docks, canals; electric, steam or water power plants; telegraph and telephone plants and lines; electric light or power lines, and includes any other works for the construction, alteration or repair of which machinery driven by mechanical power is used. Engineering.

Except when otherwise expressly stated, employer means any person, body of persons, corporate or otherwise, and the legal personal representatives of a deceased employer, all while engaged in this State in any extra hazardous work. Employer.

Employer includes owner, contractor, sub-contractor, agent, municipality, see Sec. 17. Residence outside the State immaterial.

This act has no application where the United States is the employer. (Opinion Attorney General, Sept. 20, 1911.)

**Workman.**

Workman means every person in this State, who, after September 30, 1911, is engaged in the employment of an employer carrying on or conducting any of the industries scheduled or classified in section 4, whether by way of manual labor or otherwise, and whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer: *Provided, however,* That if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children, or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit under this section; and if he take under this act, the cause of action against such other shall be assigned to the State for the benefit of the accident fund; if the other choice is made, the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated by this act for such case. Any such cause of action assigned to the State may be prosecuted, or compromised by the department, in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department.

**Actions for wrong of third parties.**

Not in course of employment: Employer injured going to supper down log chute; employe left moving work train to enter saloon, injured attempting to regain train with bottles of beer; telephone lineman falling on wet steps going to lunch.

**Benefits to whom.**

Any individual employer or any member or officer of any corporate employer who shall be carried upon the payroll at a salary or wage not less than the average salary or wage named in such payroll and who shall be injured, shall be entitled to the benefit of this act as and under the same circumstances as and subject to the same obligations as a workman.

Such person, including partners and stockholders, may elect to come under the act.

**Dependent.**

Dependent means any of the following named relatives of a workman whose death results from any injury and who leaves surviving no widow, widower, or child under the age of sixteen years, viz.: invalid child over the age of sixteen years, daughter, between sixteen and eighteen years of age, father, mother, grandfather, grandmother,

step-father, step-mother, grandson, granddaughter, step-son, step-daughter, brother, sister, half-sister, half-brother, niece, nephew, who, at the time of the accident, are dependent, in whole or in part, for their support upon the earnings of the workman. Except where otherwise provided by treaty, aliens, other than father or mother, not residing within the United States at the time of the accident, are not included.

Beneficiary means a husband, wife, child or dependent of a workman, in whom shall vest a right to receive payment under this act. Beneficiary.

Invalid means one who is physically or mentally incapacitated from earning. Invalid

The word "child," as used in this act, includes a posthumous child, a child legally adopted prior to the injury, and an illegitimate child legitimated prior to the injury. Child.

Includes a step-child.

The words injury or injured, as used in this act, refer only to an injury resulting from some fortuitous event as distinguished from the contraction of disease. Injury.

Recent medical texts indicating that hernia (rupture) ordinarily develops gradually, rarely as a result of accident, the department rules that a workman in order to be entitled to indemnity for hernia must clearly prove:

(1) The hernia is of recent origin;

(2) It must have been accompanied by pain;

(3) It must have been immediately preceded by some accidental strain in the course of hazardous employment;

(4) There must be conclusive proof that it did not exist prior to the date of the alleged injury.

In case the individual elects to be operated on, the above facts being established, one month total disability only will be allowed for recovery with compensation not to exceed 60% of wages in addition to the scale lump sum.

In case he does not elect to be operated upon, and the hernia becomes strangulated in the future, the results from said strangulation will not be indemnified.

SEC. 4. *Schedule of Contribution.*

Insomuch as industry should bear the greater portion of the burden of the cost of its accidents, each employer shall, prior to January 15th of each year, pay into the State treasury, in accordance with the following schedule, a sum equal to a percentage of his total payroll for that year,* to-wit: (the same being deemed the most accurate Schedule of costs.

*Act amended before passage requiring payment each month after Dec. 31, 1911, if funds on hand are deemed insufficient.

method of equitable distribution of burden in proportion to relative hazard):

CONSTRUCTION WORK.

Initial premium rates.

| | |
|---|---|
| Tunnels; bridges; trestles; sub-aqueous works; ditches and canals (other than irrigation without blasting); dock excavation; fire escapes; sewers; house moving; house wrecking | .065 |
| Iron, or steel frame structures or parts of structures | .080 |
| Electric light or power plants or systems; telegraph or telephone systems; pile driving; steam railroads | .050 |
| Steeples, towers or grain elevators, not metal framed; dry-docks without excavation; jetties; breakwaters; chimneys; marine railways; waterworks or systems; electric railways with rock work or blasting; blasting; erecting fireproof doors or shutters | .050 |
| Steam heating plants; tanks, water towers or windmills, not metal frames | .040 |
| Shaft sinking | .060 |
| Concrete buildings; freight or passenger elevators; fireproofing of buildings; galvanized iron or tin works; gas works, or systems; marble, stone or brick work; road making with blasting; roof work; safe moving; slate work; outside plumbing work; metal smokestacks or chimneys | .050 |
| Excavations not otherwise specified; blast furnaces | .040 |
| Street or other grading; cable or electric street railways without blasting; advertising signs; ornamental metal work in buildings | .035 |
| Ship or boat building or wrecking with scaffolds; floating docks | .045 |
| Carpenter work not otherwise specified | .035 |
| Installation of steam boilers or engines; placing wire in conduits; installing dynamos; putting up belts for machinery; marble, stone or tile setting, inside work; mantel setting; metal ceiling work; mill or ship wrighting; painting of buildings or structures; installation of automatic sprinklers; ship or boat rigging; concrete laying in floors, foundations or street paving; asphalt laying; covering steam pipes or boilers; installation of machinery not otherwise specified | .030 |
| Drilling wells; installing electrical apparatus or fire alarm systems in buildings; house heating or ventilating systems; glass setting; building hot houses; lathing; paper hanging; plastering; inside plumbing; wooden stair building; road making | .020 |

The absence of power driven machinery does not exempt occupations named in this subdivision, nor the small number of employes engaged, nor the short time required to accomplish the work.

OPERATION (INCLUDING REPAIR WORK) OF

(All combinations of material take the higher rate when not otherwise provided.)

| | | |
|---|---|---|
| Logging railroads; railroads; dredges; interurban electric railroads using third rail system; dry or floating docks | .050 | Operation and repair work. |
| Electric light or power plants; interurban electric railroads not using third rail system; quarries | .040 | |
| Street railways, all employes; telegraph or telephone systems; stone crushing; blasting furnaces; smelters; coal mines; gas works; steamboats; tugs; ferries | .030 | |
| Mines, other than coal; steam heating or power plants | .025 | |
| Grain elevators; laundries; waterworks; paper or pulp mills; garbage works | .020 | |

FACTORIES USING POWER-DRIVEN MACHINERY.

| | | |
|---|---|---|
| Stamping tin or metal | .045 | Factories. |
| Bridge work; railroad car or locomotive making or repairing; cooperage; logging with or without machinery; saw mills; shingle mills; staves; veneer; box; lath; packing cases; sash, door or blinds; barrel, keg; pail; basket; tub; wooden ware or wooden fibre ware; rolling mills; making steam shovels or dredges; tanks; water towers; asphalt; building material not otherwise specified; fertilizer; cement; stone with or without machinery; kindling wood; masts and spars with or without machinery; canneries, metal stamping extra; creosoting works; pile treating works | .025 | |
| Excelsior, iron, steel, copper, zinc, brass or lead articles or wares not otherwise specified; working in wood not otherwise specified; hardware; tile; brick; terra cotta; fire clay; pottery; earthernware; porcelain ware; peat fuel; brickettes | .020 | |
| Breweries; bottling works; boiler works; foundries; machine shops not otherwise specified | .020 | |
| Cordage; working in food stuffs, including oils, fruits and vegetables; working in wool, cloth, leather, paper, broom, brush, rubber or textiles not otherwise specified | .015 | |
| Making jewelry, soap, tallow, lard, grease, condensed milk | .015 | |
| Creameries; printing; electrotyping; photo-engraving; engraving; lithographing | .015 | |

MISCELLANEOUS WORK.

| | | |
|---|---|---|
| Stevedoring; longshoring | .030 | Miscellaneous. |
| Operating stock yards, with or without railroad entry; packing houses | .025 | |
| Wharf operation; artificial ice, refrigerating or cold storage plants; tanneries; electric systems not otherwise specified | .020 | |
| Theater stage employes | .015 | |
| Fire works manufacturing | .050 | |
| Powder works | .100 | |

Preliminary payrolls.

The application of this act as between employers and workmen shall date from and include the first day of October, 1911. The payment for 1911 shall be made prior to the day last named, and shall be preliminarily collected upon the payroll of the last preceding three months of operation. At the end of each year an adjustment of accounts shall be made upon the basis of the actual payroll. Any shortage shall be made good on or before February 1st, following. Every employer who shall enter into business at any intermediate day shall make his payment for the initial year or portion thereof before commencing operation; its amount shall be calculated upon his estimated payroll, an adjustment shall be made on or before February 1st of the following year in the manner above provided.

Shortage made good.

Preliminary payment on an estimated payroll required of new establishments, thereafter as assessed.

An establishment or business permanently dismantled or abandoned does not forfeit its "unearned premiums," but is entitled to a return of the excess payment by warrant against the Accident Fund. (Opinion Attorney General, Jan. 9, 1912.)

Class funds separate.

For the purpose of such payments accounts shall be kept with each industry in accordance with the classification herein provided and no class shall be liable for the depletion of the accident fund from accidents happening in any other class. Each class shall meet and be liable for the accidents occurring in such class. There shall be collected from each class as an initial payment into the accident fund as above specified on or before the 1st day of October, 1911, one-fourth of the premium of the next succeeding year, and one-twelfth thereof at the close of each month after December, 1911: *Provided*, Any class having sufficient funds credited to its account at the end of the first three months or any month thereafter, to meet the requirements of the accident fund, that class shall not be called upon for such month. In case of accidents occurring in such class after lapsed payment or payments said class shall pay the said lapsed or deferred payments commencing at the first lapsed payment, as may be necessary to meet such requirements of the accident fund.

Monthly assessments only as needed.

The provision for non-assessment of premium does not seem equitably to apply to owners and contractors in construction work (Classes 1 to 9, inclusive). Continuous monthly contribution is required to place operators in such work on the same competitive plane as to bidding, advance ordering of material, etc., each contract thus providing for its average quota of injuries.

The intent of the law is that each of the forty-seven funds be automatic and self-adjusting. The rate is fixed; time of payment varies with the need. The actual premium (percentage of payroll) cannot be deter-

mined in advance. The proviso here was inserted as an amendment to the original bill; the first paragraph of Sec. 4, so far as inconsistent, to be disregarded.

Accident fund.

The fund thereby created shall be termed the "accident fund" which shall be devoted exclusively to the purpose specified for it in this act.

Administration expenses excluded.

In that the intent is that the fund created under this section shall ultimately become neither more nor less than self-supporting, exclusive of the expense of administration, the rates in this section named are subject to future adjustment by the legislature, and the classifications to rearrangement following any relative increase or decrease of hazard shown by experience.

Deductions from wages unlawful.

It shall be unlawful for the employer to deduct or obtain any part of the premium required by this section to be by him paid from the wages or earnings of his workmen or any of them, and the making or attempt to make any such deduction shall be a gross misdemeanor.* If, after this act shall have come into operation, it is shown by experience under the act, because of poor or careless management, any establishment or work is unduly dangerous in comparison with other like establishments or works, the department may advance its classification of risks and premium rates in proportion to the undue hazard. In accordance with the same principle, any such increase in classification or premium rate, shall be subject to restoration to the schedule rate. Any such change in classification of risks or premium rates, or any change caused by change in the class of work, occurring during the year shall, at the time of the annual adjustment, be adjusted by the department in proportion to its duration in accordance with the schedule of this section. If, at the end of any year, it shall be seen that the contribution to the accident fund by any class of industry shall be less than the drain upon the fund on account of that class, the deficiency shall be made good to the fund on the 1st day of February of the following year by the employers of that class in proportion to their respective payments for the past year.

Establishment unduly hazardous.

Deficiency made good.

Contribution by employes to a Hospital Fund of an establishment not prohibited by this section; such funds to provide resident physician in remote camps, and procure first aid and competent care in sickness and injury. See Secs. 12, 13, 24.

---

*_Gross misdemeanor_—penalty, imprisonment in county jail not more than one year, or by a fine not to exceed one thousand dollars or both. Rem. and Bal. Code, Sec. 2267; Sec. 15, Chap. 249, Laws 1909. The workman contributes nothing under this act; see Sec. 24.

Classes named and numbered.

For the purposes of such payment and making good of deficit the particular classes of industry shall be as follows:

CONSTRUCTION WORK.

Construction work.

Class 1. Tunnels; sewer; shaft sinking; drilling wells.

*Includes* all underground work of whatever character in connection with sewer construction, includes tunnelling and shafting and work at the entrances thereof; also such work in open trenches exceeding six feet in depth, but not "excavations" as hereinafter defined.

"Excavations," rate 4 per cent.: Ditches less than six feet deep; where deeper than six feet, width must exceed half of depth.

Class 2. Bridges; mill wrighting; trestles; steeples, towers or grain elevators not metal framed; tanks; water towers, windmills not metal framed.

*Includes* assembling of parts and erection; *excludes* fabrication, manufacture. See Class 27.

Class 3. Sub-aqueous works; canal other than irrigation or docks with or without blasting; pile driving; jetties; breakwaters; marine railways.

*Includes* dock excavations, 6½ per cent. Ditches and canals, other than irrigation without blasting, rate 6½ per cent. where deeper than six feet and in width less than half of depth.

Class 4. House moving; house wrecking; safe moving.

*Excludes* ordinary operations of drayage and transfer companies.
*Includes* moving boilers, heavy machinery, etc., 5 per cent.

Class 5. Iron or steel frame structures or parts of structures; fire escapes; erecting fireproof doors or shutters; blast furnaces; concrete chimneys; freight or passenger elevators; fireproofing of buildings; galvanized iron or tin work; marble, stone or brick work; roof work; slate work; plumbing work; metal smokestacks or chimneys; advertising signs; ornamental metal work in buildings; carpenter work not otherwise specified; marble, stone or tile setting; mantel setting; metal ceiling work; painting of buildings or structures; concrete laying in floors or foundations; glass setting; building hot houses; lathing; paper hanging; plastering; wooden stair building.

*Includes* building metal, concrete or brick chimneys, 5 per cent.; construction of concrete buildings and tearing forms from walls, 5 per cent.; outside plumbing, rate 5 per cent., includes "roughing in," and side sewer work, except where underground; inside plumbing, 2 per cent., includes installation of bath tubs, etc.

*Excludes* iron or steel bridge construction (Class 2), 6½ per cent.

Class 6. Electric light and power plants or systems, telegraph or telephone systems; cable or electric railways with or without rock work or blasting; waterworks or systems; steam heating plants; gas works or systems; in-

stallation of steam boilers or engines; placing wires in conduits; installing dynamos; putting up belts for machinery; installation of automatic sprinklers; covering steam pipes or boilers; installation of machinery not otherwise specified; installing electrical apparatus or fire alarm systems in buildings; house heating or ventilating systems.

*Includes* placing wire in conduit, at 3 per cent.; blasting, 5 per cent.; clearing land with blasting, 5 per cent.; installing furnaces in residences, etc., 2 per cent.; installation of machinery includes foundations for same.

Class 7. Steam railroads; logging railroads.

*Includes* operation of logging and other steam railroads, 5 per cent.

Class 8. Road-making; street or other grading; concrete laying in street paving; asphalt laying.

*Includes* road-making with blasting, 5 per cent.; concrete sidewalk laying, 3 per cent.; plank road, street or sidewalk construction or repair, 2 per cent.; new road grading including clearing (without blasting), 2 per cent.; brick or block paving and repair, 2 per cent.

*Excludes* maintenance of dirt roads without scrapers or machines.

Class 9. Ship or boat building with scaffolds; ship wrighting; ship or boat rigging; floating docks.

*Includes* construction of drydocks without excavation, 5 per cent.

OPERATION (INCLUDING REPAIR WORK) OF

Operation and repair work.

Class 10. Logging; saw mills; shingle mills; lath mills; masts and spars with or without machinery.

*Includes* pilers, manual laborers and planers on sawmill premises, and teamsters; stump-pulling with donkey engines, 2½ per cent.; booming logs or driving ties, 2½ per cent.

*Excludes* retail lumber yards operating without machinery.

"Class 11" omitted by the legislature.

Class 12. Dredges; dry or floating docks.

Class 13. Electric light or power plants or systems; steam heat or power plants or systems; electric systems not otherwise specified.

*Excludes* elevators and individual steam heating plants in office buildings, hotels, apartment houses, residences, retail and wholesale stores. (Opinion Attorney General, Sept. 8, 1911.)

Class 14. Street railways.

*Includes* interurban electric railroads, with third rail, 5 per cent.; without third rail, 4 per cent.

Class 15. Telegraph systems; telephone systems.

*Includes* line and repair work.

*Excludes* telephone and telegraph operators.

Class 16. Coal mines.

*Excludes* office force only.

Class 17. Quarries; stone crushing; mines other than coal.

*Excludes* teamsters hauling gravel not subjected to cave-in hazard or in contact with machinery.

Class 18. Blast furnaces; smelters; rolling mills.

Class 19. Gas works.

Class 20. Steamboats; tugs; ferries.

***Admiralty Jurisdiction.*** See Sec. 18, note.

Class 21. Grain elevators.

*Includes* flouring mills, 2 per cent.; grain warehouses, chop and feed mills, 2 per cent.

*Excludes* threshing machine and hay baling outfits; merchandise warehouses without machinery.

Class 22. Laundries.

*Excludes* office force and drivers only.

Class 23. Water works.

Class 24. Paper or pulp mills.

Class 25. Garbage works; fertilizer.

FACTORIES (USING POWER-DRIVEN MACHINERY).

Factories.

Class 26. Stamping tin or metal.

Class 27. Bridge work; making steam shovels or dredges; tanks; water towers.

Class 28. Railroad car or locomotive making or repairing.

Class 29. Cooperage; staves; veneer; box; packing cases; sash, door or blinds; barrel; keg; pail; basket; tub; wood ware or wood fibre ware; kindling wood; excelsior; working in wood not otherwise specified.

*Includes* planers, if independently operated, 2½ per cent.

*Excludes* teamsters in fuel yards not working around machines.

Class 30. Asphalt.

Class 31. Cement; stone with or without machinery; building material not otherwise specified.

*Includes* operation of gravel bunkers and gravel haulers, lime burning, cutting paving blocks, rate 2½ per cent.

Class 32. Canneries of fruits or vegetables.

Class 33. Canneries of fish or meat products.

*Includes* manufacturing dogfish oil, 2½ per cent.; contract work with third parties for pack at flat rate per case, Oriental or white labor, factory owner ruled primarily responsible.

Class 34. Iron, steel, copper, zinc, brass or lead articles or wares; hardware; boiler works; foundries; machine shops not otherwise specified.

*Includes* beveling glass, rate 2½ per cent.

Class 35. Tile; brick; terra cotta; fire clay; pottery; earthenware; porcelain ware.

*Includes* manufacture glass jars, insulators, etc.

Class 36. Peat fuel; brickettes.

Class 37. Breweries; bottling works.

*Includes* brewery teamsters and helpers, manufacture of ammonia and alcohol, 2 per cent.

Class 38. Cordage; working in wool, cloth, leather, paper, brush, rubber or textile not otherwise specified.

*Includes* broom-making, 1½ per cent.

Class 39. Working in food stuffs, including oils, fruits, vegetables.

*Includes* candy and cracker factories, excluding only drivers and office force.

Class 40. Condensed milk; creameries.

Class 41. Printing; electrotyping; photo-engraving; engraving; lithographing; making jewelry.

*Includes* linotypers, compositors, proofreaders and foremen in room with machinery or shafting; errand boys.

*Excludes* bookkeepers and office force, hand engravers not in room with machinery.

Miscellaneous.

Class 42. Stevedoring; longshoring; wharf operation.

Class 43. Stock yards; packing houses; making soap, tallow, lard, grease; tanneries.

Class 44. Artificial ice, refrigerating or cold storage plants.

*Excludes* refrigerators of retail meat markets, etc.
*Includes* ice wagon drivers and helpers.

Class 45. Theater stage employes.

*Excludes* moving picture operators.

Class 46. Fire works manufacturing; powder works.

Class 47. Creosoting works; pile treating works.

Class 48 created August 14, 1911. *Includes* all funds derived from "elective non-hazardous" employments.

Average rate, when.

If a single establishment or work comprises several occupations listed in this section in different risk classes, the premium shall be computed according to the payroll of each occupation if clearly separable; otherwise an average

rate of premium shall be charged for the entire establishment, taking into consideration the number of employes and the relative hazards. If an employer besides employing workmen in extra hazardous employment shall also employ workmen in employments not extra hazardous the provisions of this act shall apply only to the extra hazardous departments and employments and the workmen employed therein. In computing the payroll the entire compensation received by every workman employed in extra hazardous employment shall be included, whether it be in the form of salary, wage, piece work, overtime, or any allowance in the way of profit-sharing, premium or otherwise, and whether payable in money, board, or otherwise.

Non-hazardous departments excluded.

The hazard of the business or enterprise determines the application of the act rather than the degree of hazard which the individual workman is subjected to. Hazardous departments are the unit of contribution, even though embracing employes rarely in danger of injury. (Opinion Attorney General, Sept. 8, 1911.)

Ruled outside the scope of the act: Operation and maintenance of elevators and individual steam heating plants in office buildings, hotels, apartment houses, residences, retail stores, etc. Farm hands grubbing stumps even with blasting powder as an incident to the business of farming, not within the act.

The premium of any establishment given an average rate is credited *pro rata* to the respective classes represented by the department payrolls.

SEC. 5. *Schedule of Awards.*

Awards.

Each workman who shall be injured whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedule, and, except as in this act otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever.

Compensation is payable whenever four facts appear, namely:

(1) The business of the employer was within the scope of this act;

(2) The employe was injured;

(3) Such injury occurred out of and incidental to his employment;

(4) Such injury was not caused by wilful misconduct. It makes no difference whose fault it was or who was to blame. It is sufficient that the industry caused the injury.

The finding of the department of the non-existence of any one of the facts above enumerated would result in the denial of an award, and in such case an appeal is allowed, as provided in section 20.

COMPENSATION SCHEDULE.

(a) Where death results from the injury the expenses of burial shall be paid in all cases, not to exceed $75.00 in any case, and, Burial.

(1) If the workman leaves a widow or invalid widower, a monthly payment of $20.00 shall be made throughout the life of the surviving spouse, to cease at the end of the month in which remarriage shall occur; and the surviving spouse shall also receive $5.00 per month for each child of the deceased under the age of sixteen years at time of the occurrence of the injury until such minor child shall reach the age of sixteen years, but the total monthly payment under this paragraph (1) of subdivision (a) shall not exceed $35.00. Upon remarriage of a widow she shall receive, once and for all, a lump sum equal to twelve times her monthly allowance, viz., the sum of $240.00, but the monthly payment for the child or children shall continue as before. Widow, invalid widower.

(2) If the workman leaves no wife or husband, but a child or children under the age of sixteen years, a monthly payment of $10.00 shall be made to each such child until such child shall reach the age of sixteen years, but the total monthly payment shall not exceed $35.00, and any deficit shall be deducted proportionately among the beneficiaries. Paid to children.

(3) If the workman leaves no widow, widower, or child under the age of sixteen years, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty per cent. of the average monthly support actually received by such dependent from the workman during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed $20.00 per month. If any dependent is under the age of sixteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent shall reach the age of sixteen years. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened. Paid to dependents.

If the workman is under the age of twenty-one years and unmarried at the time of his death, the parents or parent of the workman shall receive $20.00 per month for each Paid to parents.

month after his death until the time at which he would have arrived at the age of twenty-one years.

The rule existing at the time of the passage of this act was that parents of a minor workman were not entitled to damages for his death, even though actually dependent, recovery being limited to the loss of his services during minority. The above provision is the exclusive compensation to be allowed for the death of an unmarried minor workman. (Opinion Attorney General, Jan. 9, 1912.)

The reserve to be set apart under this provision is the present value of the series of monthly payments to be made. *Ibid.*

Paid to children.

(4) In the event a surviving spouse receiving monthly payments shall die, leaving a child or children under the age of sixteen years, the sum he or she shall be receiving on account of such child or children shall be thereafter, until such child shall arrive at the age of sixteen years, paid to the child increased 100 per cent., but the total to all children shall not exceed the sum of thirty-five dollars per month.

Permanent total disability.

(b) Permanent total disability means the loss of both legs or both arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the workman from performing any work at any gainful occupation.

Scale of pensions.

When permanent total disability results from the injury the workman shall receive monthly during the period of such disability:

(1) If unmarried at the time of the injury, the sum of $20.00.

(2) If the workman have a wife or invalid husband, but no child under the age of sixteen years, the sum of $25.00. If the husband is not an invalid, the monthly payment of $25.00 shall be reduced to $15.00.

(3) If the workman have a wife or husband and a child or children under the age of sixteen years, or, being a widow or widower, have any such child or children, the monthly payment provided in the preceding paragraph shall be increased by five dollars for each such child until such child shall arrive at the age of sixteen years, but the total monthly payment shall not exceed thirty-five dollars.

Death of injured.

(c) If the injured workman die during the period of total disability, whatever the cause of death, leaving a widow, invalid widower or child under the age of sixteen years, the surviving widow or invalid widower shall receive twenty dollars per month until death or remarriage, to be increased five dollars per month for each child under the age of sixteen years until such child shall arrive at the age of sixteen years; but if such child is or shall be with-

out father or mother, such child shall receive ten dollars per month until arriving at the age of sixteen years. The total combined monthly payment under this paragraph shall in no case exceed thirty-five dollars. Upon remarriage the payments on account of a child or children shall continue as before to the child or children.

Temporary total disability.

(d) When the total disability is only temporary, the schedule of payment contained in paragraphs (1), (2) and (3) of the foregoing subdivision (b) shall apply so long as the total disability shall continue, increased 50 per cent. for the first six months of such continuance, but in no case shall the increase operate to make the monthly payment exceed sixty per cent. of the monthly wage (the daily wage multiplied by twenty-six) the workman was receiving at the time of his injury. As soon as recovery is so complete that the present earning power of the workman, at any kind of work, is restored to that existing at the time of the occurrence of the injury the payments shall cease. If and so long as the present earning power is only partially restored the payments shall continue in the proportion which the new earning power shall bear to the old. No compensation shall be payable out of the accident fund unless the loss of earning power shall exceed five per cent.

Maximum 60 per cent. of wages.

Minimum injury.

MAXIMUM MONTHLY AWARDS UNDER SEC. 5, PARAGRAPH (d).

| Injured Worker | No Child | 1 Child | 2 Children | 3 or more Children |
|---|---|---|---|---|
| Having able-bodied husband..... | $22 50 | $30 00 | $37 50 | $45 00 |
| Unmarried..... | 30 00 | ..... | ..... | ..... |
| Having wife or invalid husband.. | 37 50 | 45 00 | 52 50 | 52 50 |
| Widow or widower..... | 30 00 | 37 50 | 45 00 | 52 50 |

To establish a valid claim under this section, the injured workman need not be so helpless as to require the assistance of a nurse, but there must be professional certification of his being entirely incapable of doing any gainful work, for a period of time resulting in a loss of not less than 5 per cent. of his monthly wage.

Awards under this paragraph for a temporary period, paid monthly or otherwise, not to be deducted from awards for dismemberment or "permanent partial disability" provided in subdivision (f). (Opinion Attorney General, Dec. 12, 1911.)

The award of 50 per cent. increase over the rates scheduled in subdivision (b) may be paid monthly or at the termination of the disability. *Ibid.*

Reserve to guarantee monthly payments.

(e) For every case of injury resulting in death or permanent total disability it shall be the duty of the department to forthwith notify the State Treasurer, and he shall set apart out of the accident fund a sum of money for the case, to be known as the estimated lump value of the monthly payments provided for it, to be calculated

upon the theory that a monthly payment of twenty dollars, to a person thirty years of age, is equal to a lump sum payment, according to the expectancy of life as fixed by the American Mortality Table, of four thousand dollars, but the total in no case to exceed the sum of four thousand dollars. The State Treasurer shall invest said sum at interest in the class of securities provided by law for the investment of the permanent school fund, and out of the same and its earnings shall be paid the monthly installments and any lump sum payment then or thereafter arranged for the case. Any deficiency shall be made good out of, and any balance or overplus shall revert to the accident fund. The State Treasurer shall keep accurate account of all such segregations of the accident fund, and may borrow from the main fund to meet monthly payments pending conversion into cash of any security, and in such case shall repay such temporary loan out of the cash realized from the security.

How invested.

Accurate segregations.

"The industries of today shall provide for the accidents of today." The reserve to guarantee the continuance of the pensions provided, "set apart for a beneficiary over thirty years of age should be the proportionate part of $4,000, determined by the relation of the expectancy of the life of the beneficiary to the expectancy of one thirty years of age." (Opinion Attorney General, Jan. 9, 1912.)

To the reserve of a widow is added a reserve for children under 16, but not to exceed $4,000 set apart "for the case." *Ibid.*

Expectancy of life: Age 30, 35.33 years; 40, 28.18 years; 50, 20.91 years; 60, 14.10 years; 70, 8.48 years.

See Insurance Code, Sec. 92, Chap. 49, Laws 1911.

Payment of warrants by employer, see Sec. 26.

(f) Permanent partial disability means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where ligaments are severed, or any other injury known in surgery to be permanent partial disability. For any permanent partial disability resulting from an injury, the workman shall receive compensation in a lump sum in an amount equal to the extent of the injury, to be decided in the first instance by the department, but not in any case to exceed the sum of $1,500. The loss of one major arm at or above the elbow shall be deemed the maximum permanent partial disability. Compensation for any other permanent partial disability shall be in the proportion which the extent of such disability shall bear to the said maximum. If the injured workman be under the age of twenty-one years and unmarried, the parents or parent shall also

Permanent partial disability.

Unmarried minor.

receive a lump sum payment equal to ten per cent. of the amount awarded the minor workman.

Award hereunder dependent upon surgical discharge and proofs when the extent of the injury is determinate. See Subd. (d). A lump sum will not be paid where total disability is probable, but monthly allowances under (d).

Awards made under this section are according to a surgical scale of relative impairment of earning capacity. Previous wages or specialized value of lost members cannot be considered. While the workman may not get full "compensation," he will *always* get some compensation, without expense to him and at a time when he most needs it.

Additional injury.

(g) Should a further accident occur to a workman already receiving a monthly payment under this section for a temporary disability, or who has been previously the recipient of a lump sum payment under this act, his future compensation shall be adjusted according to the other provisions of this section and with regard to the combined effect of his injuries, and his past receipt of money under this act.

May readjust compensation.

(h) If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated in any case the department may, upon the application of the beneficiary or upon its own motion, readjust for future application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payments.

Abandonment.

(i) A husband or wife of an injured workman, living in a state of abandonment for more than one year at the time of the injury or subsequently, shall not be a beneficiary under this act.

Payments provided in subdivisions (b) and (d) modified when the above family condition exists.

Beneficiary out of state.

(j) If a beneficiary shall reside or remove out of the State the department may, in its discretion, convert any monthly payments provided for such case into a lump sum payment (not in any case to exceed $4,000.00) upon the theory, according to the expectancy of life as fixed by the American Mortality Table, that a monthly payment of $20.00 to a person thirty years of age is worth $4,000.00, or, with the consent of the beneficiary, for a smaller sum.

See Sec. 7, note.

Court review.

(k) Any court review under this section shall be initiated in the county where the workman resides or resided at the time of the injury, or in which the injury occurred.

SEC. 6. *Intentional Injuries—Status of Minors.*

Intentional injury.

If injury or death results to a workman from the deliberate intention of the workman himself to produce such injury or death, neither the workman nor the widow, widower, child or dependent of the workman shall receive any payment whatsoever out of the accident fund. If injury or death results to a workman from the deliberate intention of his employer to produce such injury or death, the workman, the widow, widower, child or dependent of the workman shall have the privilege to take under this act and also have cause of action against the employer, as if this act had not been enacted, for any excess of damage over the amount received or receivable under this act.

Minor workman *sui juris*.

A minor working at an age legally permitted under the laws of this State shall be deemed *sui juris* for the purpose of this act, and no other person shall have any cause of action or right to compensation for an injury to such minor workman except as expressly provided in this act, but in the event of a lump sum payment becoming due under this act to such minor workman, the management of the sum shall be within the probate jurisdiction of the courts the same as other property of minors.

Where lump sums awarded amount to a sufficient fund to reasonably justify investment, a guardian to be appointed.

SEC. 7. *Conversion Into Lump Sum Payment.*

Lump sum payment.

In case of death or permanent total disability the monthly payment provided may be converted, in whole or in part, into a lump sum payment (not in any case to exceed $4,000.00), on the theory, according to the expectancy of life as fixed by the American Mortality Table, that a monthly payment of $20.00 to a person thirty years of age is worth the sum of $4,000.00, in which event the monthly payment shall cease in whole or in part accordingly or proportionately. Such conversion may only be made after the happening of the injury and upon the written application of the beneficiary (in case of minor children, the application may be by either parent) to the department, and shall rest in the discretion of the department. Within the rule aforesaid the amount and value of the lump sum payment may be agreed upon between the department and the beneficiary.

The power here given to the department will, as a matter of policy, be seldom exercised, as in practically all cases it is better for the beneficiaries to receive the award to which they are entitled in installments at stated intervals, rather than in a lump sum. The reasons for this are obvious.

SEC. 8. *Defaulting Employers.*

Employer defaulting.

If any employer shall default in any payment to the accident fund hereinbefore in this act required, the sum due shall be collected by action at law in the name of the State as plaintiff, and such right of action shall be in addition to any other right of action or remedy. In respect to any injury happening to any of his workmen during the period of any default in the payment of any premium under section 4, the defaulting employer shall not, if such default be after demand for payment, be entitled to the benefits of this act, but shall be liable to suit by the injured workman (or the husband, wife, child or dependent of such workman in case death result from the accident), as he would have been prior to the passage of this act.

Collecting in excess.

In case the recovery actually collected in such suit shall equal or exceed the compensation to which the plaintiff therein would be entitled under this act, the plaintiff shall not be paid anything out of the accident fund; if the said amount shall be less than such compensation under this act, the accident fund shall contribute the amount of the deficiency. The person so entitled under the provisions of this section to sue shall have the choice (to be exercised before suit) of proceeding by suit or taking under this act. If such person shall take under this act, the cause of action against the employer shall be assigned to the State for the benefit of the accident fund. In any suit brought upon such cause of action the defense of fellow servant and assumption of risk shall be inadmissible, and the doctrine of comparative negligence shall obtain. Any such cause of action assigned to the State may be prosecuted or compromised by the department in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department.

Compromise only on approval.

The defaulting employer cannot avail himself of the "common law" defenses, which have been so effective in defeating personal injury claims heretofore, where the fact of the injury to his employe is not contested.

These defenses now abolished, commonly referred to as "contributory negligence," "assumption of risk," and "fellow servant rule," are:

1. That the employe was not, when injured, in the exercise of due care, or was guilty of contributory negligence;

2. That the injury received by the employe was one of the ordinary risks incident to the contract of employment;

3. That the injury was the result of the negligence of a fellow servant.

It will thus be seen that by the common law rule the employe assumes all of the ordinary risks incident to his employment, and that his employer is only liable when he is guilty of negligence and the employe is

wholly free from negligence and his injury was not caused by the negligence of a fellow servant.

Under this section employers who have not contributed to the state insurance fund are deprived of the common law defenses, and it would seem that the only effective defense available in an action for damages for an alleged injury occurring to an employe in the course of his employment would be that no injury in fact had been sustained, or that the injury received was self-inflicted or that the employer was himself free from fault. The amount of the recovery should be determined by the "comparative negligence" of all parties.

The injured employe once having exercised his option, the decision is final and may not be withdrawn.

SEC. 9. *Employer's Responsibility for Safeguard.*

Violation of statutes.

If any workman shall be injured because of the absence of any safeguard or protection required to be provided or maintained by, or pursuant to, any statute or ordinance, or any departmental regulation under any statute, or be, at the time of the injury, of less than the maximum age prescribed by law for the employment of a minor in the occupation in which he shall be engaged when injured, the employer shall, within ten days after demand therefor by the department, pay into the accident fund, in addition to the same required by section 4 to be paid:

Payment into accident fund.

(a) In case the consequent payment to the workman out of the accident fund be a lump sum, a sum equal to 50 per cent. of that amount.

(b) In case the consequent payment to the workman be payable in monthly payments, a sum equal to 50 per cent. of the lump value of such monthly payment, estimated in accordance with the rule stated in section 7.

A boy under 14 years of age, or a girl under 16 years, may not be employed in dangerous trades without written permit from superior court. (Sec. 2447, Rem. and Bal. Code.) Children under 15 may not be so employed while school is in session. (Sec. 4715, Rem. and Bal. Code.)

See Sec. 30 herein. Sec. 2446, Rem. and Bal. Code ruled not applicable to factories.

Not applied, when.

The foregoing provisions of this act shall not apply to the employer if the absence of such guard or protection be due to the removal thereof by the injured workman himself or with his knowledge by any of his fellow workmen, unless such removal be by order or direction of the employer or superintendent or foreman of the employer, or any one placed by the employer in control or direction of such workman. If the removal of such guard or protection be by the workman himself or with his consent by any of his fellow workmen, unless done by order or direction of the employer or the superintendent or foreman of the employer, or any one placed by the employer in con-

trol, or direction of such workman, the schedule of compensation provided in section 5 shall be reduced 10 per cent. for the individual case of such workman.

SEC. 10. *Exemption of Awards.*

Assignments of award void.

No money paid or payable under this act out of the accident fund shall, prior to issuance and delivery of the warrant therefor, be capable of being assigned, charged, nor ever be taken in execution or attached or garnished, nor shall the same pass to any other person by operation of law. Any such assignment or charge shall be void.

This section is necessary in order to protect the injured employe and his dependents. If the claim were made assignable he could sell it for a small sum, and thus deprive his dependents of benefits to which they are entitled. The compensation also is made exempt from his debts on the same principle that wages now are made exempt. The justice and fairness of this should be conceded by all.

SEC. 11. *Non-Waiver of Act by Contract.*

Cannot contract waiver.

No employer or workman shall exempt himself from the burden or waive the benefits of this act by any contract, agreement, rule or regulation, and any such contract, agreement, rule or regulation shall be *pro tanto* void.

SEC. 12. *Filing Claim for Compensation.*

File application and certificate.

(a) Where a workman is entitled to compensation under this act he shall file with the department, his application for such, together with the certificate of the physician who attended him, and it shall be the duty of the physician to inform the injured workman of his rights under this act and to lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the workman.

The physician's report is a duty to the state; no payment is allowed therefor. Charge for professional services rendered a workman is his personal debt, unless the employer contracted to pay the same. See Sec. 24, 4, 7.

Proofs of death.

(b) Where death results from injury the parties entitled to compensation under this act, or some one in their behalf, shall make application for the same to the department, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this act, certificates of attending physician, if any, and such other proof as required by the rules of the department.

(c) If change of circumstances warrant an increase or

rearrangement of compensation, like application shall be made therefor. No increase or rearrangement shall be operative for any period prior to application therefor.

Must file within one year.

(d) No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the right thereto accrued.

All blanks necessary in the judgment of the department for the administration of the law are furnished free of cost to all employers and employes coming within the purview of the act.

SEC. 13. *Medical Examination.*

Medical examination.

Any workman entitled to receive compensation under this act is required, if requested by the department, to submit himself for medical examination at a time and from time to time at a place reasonably convenient for the workman and as may be provided by the rules of the department. If the workman refuses to submit to any such examination, or obstructs the same, his rights to monthly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period.

Refusal to submit to examination where a lump sum award is anticipated will be *prima facie* cause for rejection of claim which may be filed within the year.

SEC. 14. *Notice of Accident.*

Employer's report.

Whenever any accident occurs to any workman it shall be the duty of the employer to at once report such accident and the injury resulting therefrom to the department, and also to any local representative of the department. Such report shall state:

1. The time, cause and nature of the accident and injuries, and the probable duration of the injury resulting therefrom.

2. Whether the accident arose out of or in the course of the injured person's employment.

3. Any other matters the rules and regulations of the department may prescribe.

"Every person who, after due notice, shall refuse or neglect to make or furnish any statement, report or information lawfully required of him by any public officer, or who, in such statement, report or information shall make any wilfully untrue, misleading or exaggerated statement, or who shall wilfully hinder, delay or obstruct any public officer in the discharge of his official powers or duties, shall be guilty of a misdemeanor." Rem. and Bal. Code, Sec. 2672; Sec. 420, Chap. 249, Laws 1909.

SEC. 15. *Inspection of Employer's Books.*

Inspection of books.

The books, records and payrolls of the employer pertinent to the administration of this act shall always be open

to inspection by the department or its traveling auditor, agent, or assistant, for the purpose of ascertaining the correctness of the payroll, the men employed, and such other information as may be necessary for the department and its management under this act. Refusal on the part of the employer to submit said books, records and payrolls for such inspection to any member of the Commission, or any assistant presenting written authority from the Commission, shall subject the offending employer to a penalty of one hundred dollars for each offense, to be collected by civil action in the name of the State and paid into the accident fund, and the individual who shall personally give such refusal shall be guilty of a misdemeanor.

Refusal—penalty.

*Misdemeanor*—Penalty, imprisonment in county jail not to exceed 90 days, or by a fine not to exceed $250.00. Rem. and Bal. Code, Sec. 2266; Sec. 14, Chap. 249, Laws 1909.

SEC. 16. *Penalty for Misrepresentation as to Payroll.*

Any employer who shall misrepresent to the department the amount of payroll upon which the premium under this act is based shall be liable to the State in ten times the amount of the difference in premium paid and the amount the employer should have paid. The liability to the State under this section shall be enforced in a civil action in the name of the State. All sums collected under this section shall be paid into the accident fund.

Misrepresentation—penalty.

SEC. 17. *Public and Contract Work.*

Whenever the State, county or any municipal corporation shall engage in any extra hazardous work in which workmen are employed for wages, this act shall be applicable thereto. The employer's payments into the accident fund shall be made from the treasury of the State, county or municipality. If said work is being done by contract, the payroll of the contractor and the sub-contractor shall be the basis of computation, and in the case of contract work consuming less than one year in performance the required payment into the accident fund shall be based upon the total payroll. The contractor and any sub-contractor shall be subject to the provisions of the act, and the State for its general fund, the county or municipal corporation shall be entitled to collect from the contractor the full amount payable to the accident fund, and the contractor, in turn shall be entitled to collect from the sub-contractor his proportionate amount of the payment. The provisions of this section shall apply to all

Public work.

Public contract work.

Private contract work.

Surety for payments.

extra hazardous work done by contract, except that in private work the contractor shall be responsible, primarily and directly, to the accident fund for the proper percentage of the total payroll of the work and the owner of the property affected by the contract shall be surety for such payments. Whenever and so long as, by State law, city charter or municipal ordinance, provision is made for municipal employes injured in the course of employment, such employes shall not be entitled to the benefits of this act and shall not be included in the payroll of the municipality under this act.

Payments into the Accident Fund to be made out of the treasury of the city, county, school, port or drainage district; abstract of contractors' payrolls, as well as of the direct employes in hazard, to be forwarded to the department monthly. The public corporation is entitled (if it so elect) to recoup from the contractor. Contractors in such work required to file payrolls monthly with the city, etc.

No distinction in rate or assessment can be made between contractors, or others, in public or private work. The same premium and necessity of contribution apply, determined by the payroll of employes, hazard, accident experience of the class, and sound discretion of the department.

Contractors engaged in work for the federal government: Where the United States acquired land *by purchase* for its own use, this act is not applicable to such works and occupations as may be carried on within the confines of such land. (Opinion Attorney General, Sept. 20, 1911.)

An expert rendering service at time rates is an independent contractor only where he fixes the conditions of work and hazard.

SEC. 18. *Interstate Commerce.*

Intrastate, interstate, and foreign commerce.

The provisions of this act shall apply to employers and workmen engaged in intrastate state and also in interstate or foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the Congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, except that any such employer and any of his workmen working only in this State may, with the approval of the department, and so far as not forbidden by any act of Congress, voluntarily accept the provisions of this act by filing written acceptances with the department. Such acceptances, when filed with and approved by the department, shall subject the acceptors irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms. Payment of premium shall be on the basis of the payroll of the workmen who accept as aforesaid.

"The state legislature is without power to prescribe an exclusive remedy," where an injured seaman has the right of relief in admiralty. Act limited in compulsory operation "to vessels operating upon the navi-

gable waters of the state without any navigable outlet to any other state or country." (Opinion Attorney General, Oct. 28, 1911); Cf. *The Genesee Chief*, 12 How. 457; *West v. Martin*, 51 Wash. 85.

Loading or unloading at wharf, see *The Mary Garrett*, 63 Fed. 1011; *Herman v. Port Blakely Mill Co.*, 69 Fed. 646.

Interstate commerce, see *Southern Ry. Co. v. U. S. Sup. Ct.*, Oct. 30, 1911, 164 Fed. 347; *Zikos v. O. R. & N. Co.*, 179 Fed. 893.

SEC. 19. *Elective Adoption of Act.*

Employments not extra-hazardous—rate.

Any employer and his employes engaged in works not extra hazardous may, by their joint election, filed with the department, accept the provisions of this act, and such acceptances, when approved by the department, shall subject them irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms. Ninety per cent. of the minimum rate specified in section 4 shall be applicable to such case until otherwise provided by law.

Elective non-hazardous industries or occupations segregated into Class 48 at rate of $1.35 per $100.00 of payroll. (Opinion Attorney General, Sept. 16, 1911.)

SEC. 20. *Court Review.*

Any employer, workman, beneficiary, or person feeling aggrieved at any decision of the department affecting his interests under this act may have the same reviewed by a proceeding for that purpose, in the nature of an appeal, initiated in the superior court of the county of his residence (except as otherwise provided in subdivision (1) of section numbered 5) in so far as such decision rests upon questions of fact, or on the proper application of the provisions of this act, it being the intent that matters resting in the discretion of the department shall not be subject to review. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. No such appeal shall be entertained unless notice of appeal shall have been served by mail or personally upon some member of the Commission within twenty days following the rendition of the decision appealed from and communication thereof to the person affected thereby. No bond shall be required, except that an appeal by the employer from a decision of the department under section 9 shall be ineffectual unless, within five days following the service of notice thereof, a bond, with surety satisfactory to the court, shall be filed, conditioned to perform the judgment of the court. Except in the case last named an appeal shall not be a stay. The calling of a jury shall rest in

Opportunity for hearing.

Bond filed.

Jury.

the discretion of the court except that in cases arising under sections 9, 15 and 16 either party shall be entitled to a jury trial upon demand. It shall be unlawful for any attorney engaged in any such appeal to charge or receive any fee therein in excess of a reasonable fee, to be fixed by the court in the case, and, if the decision of the department shall be reversed or modified, such fee and the fees of medical and other witnesses and the costs shall be payable out of the administration fund, if the accident fund is affected by the litigation. In other respects the practice in civil cases shall apply. Appeal shall lie from

Appeal.

the judgment of the superior court as in other civil cases. The Attorney General shall be the legal adviser of the department and shall represent it in all proceedings, whenever so requested by any of the Commissioners. In all court proceedings under or pursuant to this act the decision of the department shall be *prima facie* correct, and the burden of proof shall be upon the party attacking the same.

**The finding and award of the department appears to be reversible only on the three grounds: (1) That it acted without or in excess of its powers; (2) that the award was procured by fraud; (3) that the findings of fact by the department do not support the award.**

SEC. 21. *Creation of Department.*

The administration of this act is imposed upon a department, to be known as the Industrial Insurance Department, to consist of three Commissioners to be appointed by the Governor. One of them shall hold office

Terms of Commissioners.

for the first two years, another for the first four years, and another for the first six years following the passage and approval of this act. Thereafter the term shall be six years. Each Commissioner shall hold until his successor shall be appointed and shall have qualified. A decision of any question arising under this act concurred in by two of the Commissioners shall be the decision of the department. The Governor may at any time remove any Commissioner from office in his discretion, but within ten days following any such removal the Governor shall file in the office of the Secretary of State a statement of his reasons therefor. The Commission shall select one of their members as chairman. The main office of the Commission shall be at the State capitol, but branch offices may be established at other places in the State. Each member of the

Subpoenas.

Commission shall have power to issue subpoenas requiring

the attendance of witnesses and the production of books and documents.

See Sec. 15, note.

SEC. 22. *Salary of Commissioners.*

The salary of each of the Commissioners shall be thirty-six hundred dollars per annum, and he shall be allowed his actual and necessary traveling and incidental expenses; and any assistant to the Commissioners shall be paid for each full day's service rendered by him, his actual and necessary traveling expenses and such compensation as the Commission may deem proper, not to exceed six dollars per day to an auditor, or five dollars per day to any other assistant. Salary. Auditors and assistants.

SEC. 23. *Deputies and Assistants.*

The Commissioners may appoint a sufficient number of auditors and assistants to aid them in the administration of this act, at an expense not to exceed $5,000.00 per month. They may employ one or more physicians in each county for the purpose of official medical examinations, whose compensation shall be limited to five dollars for each examination and report therein. They may procure such record books as they may deem necessary for the record of the financial transactions and statistical data of the department, and the necessary documents, forms and blanks. They may establish and require all employers to install and maintain an uniform form of payroll. Deputies.

SEC. 24. *Conduct, Management and Supervision of Department.*

The Commission shall, in accordance with the provisions of this act: Duties of Commission.

1. Establish and promulgate rules governing the administration of this act.

2. Ascertain and establish the amounts to be paid into and out of the accident fund.

It is contemplated that Class Bulletins to emphasize accident prevention in various industries may be issued from time to time; and Safety Regulations promulgated after consideration in trade conventions, violation of which may automatically increase the premium rate of the offending employer.

3. Regulate the proof of accident and extent thereof, the proof of death and the proof of relationship and the extent of dependency.

4. Supervise the medical, surgical and hospital treatment to the intent that same may be in all cases suitable and wholesome.

There is no fund or provision for payment of charges for ambulance, physician, surgeon, hospital, nurse, medicine or surgical appliances. The "first aid" provision was stricken from the proposed act before passage by the legislature. See Appendix II.

5. Issue proper receipts for moneys received, and certificates for benefits accrued and accruing.

6. Investigate the cause of all serious injuries and report to the Governor from time to time any violations or laxity in performance of protective statutes or regulations coming under the observation of the department.

7. Compile and preserve statistics showing the number of accidents occurring in the establishment or works of each employer, the liabilities and expenditures of the accident fund on account of, and the premium collected from the same, and hospital charges and expenses.

8. Make annual reports to the Governor (one of them not more than sixty nor less than thirty days prior to each regular session of the legislature) of the workings of the department, and showing the financial status and the outstanding obligations of the accident fund, and the statistics aforesaid.

SEC. 25. *Medical Witnesses.*

Expert testimony.

Upon the appeal of any workman from any decision of the department affecting the extent of his injuries or the progress of the same, the court may appoint not to exceed three physicians to examine the physical condition of the appellant, who shall make to the court their report thereon, and they may be interrogated before the court by or on behalf of the appellant in relation to the same. The fee of each shall be fixed by the court, but shall not exceed ten dollars per day each.

SEC. 26. *Disbursement of Funds.*

Disbursement out of the funds shall be made only upon warrants drawn by the State Auditor upon vouchers therefor transmitted to him by the department and audited by him. The State Treasurer shall pay every warrant out of the fund upon which it is drawn. If, at any time, there

Employer shall pay, when.

shall not be sufficient money in the fund on which any such warrant shall have been drawn wherewith to pay the same, the employer on account of whose workman it was that the warrant was drawn shall pay the same, and he shall

be credited upon his next following contribution to such fund the amount so paid with interest thereon at the legal rate from the date of such payment to the date such next following contribution became payable, and if the amount of the credit shall exceed the amount of the contribution, he shall have a warrant upon the same fund for the excess, and if any such warrant shall not be so paid, it shall remain, nevertheless, payable out of the fund. The State Treasurer shall to such extent as shall appear to him to be advisable keep the moneys of the unsegregated portion of the accident fund invested at interest in the class of securities provided by law for the investment of the permanent school fund. The State Treasurer shall be liable on his official bond for the safe custody of the moneys and securities of the accident fund, but all the provisions of an act approved February 21, 1907, entitled "An act to provide for State depositories and to regulate the deposits of State moneys therein," shall be applied to siad moneys and the handling thereof by the State Treasurer.

Keep fund invested.

SEC. 27. *Test of Invalidity of Act.*

If any employer shall be adjudicated to be outside the lawful scope of this act, the act shall not apply to him or his workman, or if any workman shall be adjudicated to be outside the lawful scope of this act because of remoteness of his work from the hazard of his employer's work, any such adjudication shall not impair the validity of this act in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions of section 4 of this act for the creation of the accident fund, or the provisions of this act making the compensation to the workman provided in it exclusive of any other remedy on the part of the workman shall be held invalid the entire act shall be thereby invalidated except the provisions of section 31, and an accounting according to the justice of the case shall be had of moneys received. In other respects an adjudication of invalidity of any part of this act shall not affect the validity of the act as a whole or any other part thereof.

Shall not impair act.

SEC. 28. *Statute of Limitations Saved.*

If the provisions of this act relative to compensation for injuries to or death of workmen become invalid because of any adjudication, or be repealed, the period intervening

between the occurrence of an injury or death, not previously compensated for under this act by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of the invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death: *Provided*, That such action be commenced within one year after such repeal or adjudication; but in any such action any sum paid out of the accident fund to the workman on account of injury, to whom the action is prosecuted, shall be taken into account or disposed of as follows: If the defendant employer shall have paid without delinquency into the accident fund the payment provided by section 4, such sums shall be credited upon the recovery as payment thereon, otherwise the sum shall not be so credited but shall be deducted from the sum collected and be paid into the said fund from which they had been previously disbursed.

Employer credited with compensation paid.

SEC. 29. *Appropriations.*

Administration fund.

There is hereby appropriated out of the State treasury the sum of one hundred and fifty thousand dollars, or so much thereof as may be necessary, to be known as the administration fund, out of which the salaries, traveling and office expenses of the department shall be paid, and also all other expenses of the administration of the accident fund; and there is hereby appropriated out of the accident fund for the purpose to which said fund is applicable the sum of $1,500,000, or so much thereof as shall be necessary for the purposes of this act.

Accident fund.

The law requires the state to pay the entire cost of administration of the state insurance fund, leaving the whole amount paid into such fund by the employers to be devoted to the payment of awards for injuries.

The state can well afford to bear this expense, as its courts will be relieved of a large amount of work, and the burden now placed upon taxpayers by the trial of negligence cases will be minimized. The tendency of this act should be to produce good will between employer and employe, and to lessen the cases of hardship among dependents of injured employes. In taking into consideration the state's many vital interests in the welfare of the workman and his family, the general taxpayer may well afford to bear the expense of administration.

SEC. 30. *Safeguard Regulations Preserved.*

Previous acts not repealed.

Nothing in this act contained shall repeal any existing law providing for the installation or maintenance of any device, means or method for the prevention of accidents in extra hazardous work or for a penalty or punishment for failure to install or maintain any such protective device,

means or method, but sections 8, 9 and 10 of the act approved March 6, 1905, entitled "An act providing for the protection and health of employes in factories, mills or workshops, where machinery is used, and providing for suits to recover damages sustained by the violation thereof, and prescribing a punishment for the violation thereof and repealing an act entitled 'An act providing for the protection of employes in factories, mills, or workshops where machinery is used, and providing for the punishment of the violation thereof, approved March 6, 1903,' and repealing all other acts or parts of acts in conflict herewith," are hereby repealed, except as to any cause of action which shall have accrued thereunder prior to October 1, 1911.

The formation of corporate or voluntary associations, by members of the compulsory classes of employers, to study methods and appliances for accident prevention and to reduce the insurance cost under this act is urged and the co-operation of the Commission tendered.

SEC. 31. *Distribution of Funds in Case of Repeal.*

Refund of moneys.

If this act shall be hereafter repealed, all moneys which are in the accident fund at the time of the repeal shall be subject to such disposition as may be provided by the legislature, and in default of such legislative provision distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

SEC. 32. *Saving Clause.*

Actions pending.

This act shall not affect any action pending or cause of action existing on the 30th day of September, 1911.

Passed the House February 23, 1911.
Passed the Senate March 7, 1911.
Approved by the Governor March 14, 1911.

# APPENDIX I.

Introduction to report of Commission appointed by Governor M. E. Hay to investigate the problems of industrial accidents and to draft a bill on the subject of Employes Compensation to be submitted to the 1911 session of the Washington legislature.

TACOMA, WASHINGTON, December 30, 1910.

*To the Honorable M. E. Hay, Governor of Washington:*

The Employers' Liability Commission appointed by you to investigate the problems of industrial accidents and draft a bill upon the subject for submission to the legislature at its next session, respectfully report as follows:

The Commission consists of the following: Employers, Paul E. Page of Buckley, F. B. Hubbard of Centralia, James Anderson of Seattle, J. A. Falconer of Everett, and J. P. McGoldrick of Spokane; employes, P. Henretty of Cle Elum, E. S. Jones of Ellensburg, Clarence Parker of Tacoma, J. H. Wallace of Seattle, and George Von Eschen of Spokane.

We organized at the city of Tacoma on the 29th day of September, 1910, by electing Mr. Page chairman, and Mr. Henretty secretary, and appointed Mr. Harold Preston of Seattle our attorney. We have had numerous meetings and gathered such statistics of industrial accidents as were available, but found it impossible to obtain comprehensive statistics of any industry in the state except that of coal mining.

It took us little time, however, to reach an agreement with the Illinois commission, that the present system of law in relation to the matter is "unjust, haphazard, inadequate and wasteful, the cause of enormous suffering, of much disrespect for law, and of a badly distributed burden upon society;" and with the New York commission, that "present conditions as to employers' liability are intolerable;" and with Governor Hughes of New York, that "our present methods are wasteful and result in injustice. * * * As a result the workmen do not receive proper compensation, and employers pay large amounts that do not reach them;" and with President Roosevelt, in urging upon Congress the adoption of the compensation system for workmen employed by the government, that "it is a matter of humiliation to the nation that there should not be on our statute books provision to meet and partially to atone for cruel misfortune when it comes upon a man, through no fault of his own, while faithfully serving the public. In no other prominent industrial country in the world could such gross injustice occur; for almost all civilized nations have enacted legislation embodying the complete recognition of the principle which places the entire trade risk for industrial accident (excluding, of course, accidents due to the wilful misconduct of the employe) on the industry as represented by the employer, which in this case is the government. * * * The same broad principle which should apply to the government should ultimately be made applicable to all private employers. Where the nation has the power it should enact laws to this effect. Where the states alone have the power they should enact the laws."

The principle of sure compensation to the injured workman, regardless of questions of negligence, has obtained for years in every country of continental Europe. It has there given complete satisfaction and proved bene-

ficial to employer and employe alike, and has removed one of the chief causes of friction and animosity between employer and employe.

When first enacted in Germany, twenty-five years ago, it was feared that it would prove a handicap to the employer in his competition with the employers of other countries. The remarkable strides made by German industry since that time has proven that the apprehension was unfounded; and the Commission are of the opinion that the industries of Washington, in their competition with like industries in other states and countries, will be benefited rather than harmed if that principle shall be adopted into the legislation of Washington.

The subject is one of present intense interest in many parts of the United States. Commissions like our Commission have been constituted in Massachusetts, New York, Illinois, Minnesota and Wisconsin, and some of them are still at work upon the problem. They have been hampered in their work by provisions of their constitutions not contained in the constitution of Washington, in which respect we consider the State of Washington to be fortunate, in that the way seems open here to enact into law the true principle which should govern the relations between employers and employes engaged in hazardous occupations.

We submit herewith a proposed bill which we have prepared, and which has our unanimous approval. Most of the commissions of other states have found it necessary from a legal standpoint to leave the applicability of the act to the option of the workman; that is to say, he is at liberty to take under the act or to reject the act and bring his action at law against his employer; yet they all agree that the only justification for imposing absolute liability upon the employer in all cases, regardless of the question of negligence, is to, on the other hand, take away from the employe the right to sue at law. They have devised plans, the object of which is to leave the option in theory in the hope that it will not obtain in practice. The bill herewith submitted withdraws the matter from the domain of private controversy and from the jurisdiction of the courts, provides funds out of which every workman injured, and the family of every workman killed in the course of industrial employment, receive a measure of compensation, regardless of the question who was to blame for the accident, and provides that this shall be the workman's sole remedy, and the contribution which the employer makes to the funds his sole financial responsibility.

The problem of extremest difficulty with which we have been confronted has been the fixing of the rates of contribution. Most employers in the State today procure what is known as employers' liability policies, for which they pay a certain percentage of their payroll, and which furnishes them the agreement of the insurer to indemnify them against all demands made against them by or on account of employes injured in their establishments.

It is reasonably well established by statistics that of the sums of money paid by the employer for employers' liability insurance, little, if any, in excess of twenty per cent. thereof reaches the injured employe or his family. In the State of Washington the sum paid last year for such insurance was over six hundred thousand dollars, of which nearly five hundred thousand dollars was absolutely wasted. Insurance men agree that of such insurance sixty per cent. of the premiums is expended in expenses of solicitation, office expenses, expenses of adjustment and profits to stockholders. In accident

insurance it is estimated that fifty per cent. of the premiums paid is consumed in the same way.

It is estimated that one accident out of eleven is prosecuted in the courts, and that one out of ten prosecuted is successful. The expenses to the State and the several counties of the State, in providing the court machinery for trying out these contests is enormous. In its limited time the Commission has not been able to ascertain from the court records the precise size of that item of cost; it is variously estimated at from one hundred thousand dollars to two hundred thousand dollars per year. Whatever the amount, it is all waste and furnishes, in the opinion of the Commission, ample justification for the provision in the proposed bill, that the State appropriate out of its treasury one hundred and fifty thousand dollars to defray the expenses of the department for the first sixteen months of operation under the act if the act shall be passed by the coming legislature; that is to say, from October first (the date on which it is proposed the act shall become operative between employer and employe) and the time fixed by law for the next session of the legislature.

If other justification for such an appropriation were needed from a financial standpoint, it is only necessary to consider the financial burden from which the counties of the State will be relieved by a law which will provide an insured living for injured workmen, their widows and children, thereby avoiding the possibility of their becoming public charges or worse.

The Illinois commission in its investigation discovered that in three and one-half years the county of Cook alone cared for one hundred and forty-seven such families, numbering five hundred and fifty-eight individuals. In seventy-two of these families the wage-earner had been killed; in seventy-five merely injured. Of the entire one hundred and forty-seven families only forty-three had any wage income whatever. The forty-three families averaged a weekly income of $6.88. The entire group had an average income of fifty cents per week for each person. Of these families seventy-two were native Americans. The Illinois commission "found painfully instructive the stories of how the women and children in these one hundred and forty-seven families met the load thus thrust upon them."

On the other side of the account we hear frequently of large verdicts being rendered in favor of the plaintiff in such cases; yet investigation has proven that approximately five hundred dollars is the average compensation received under the existing system for the accidental death of an industrial workman. When substantial recoveries are secured, they are secured only at the end of years of litigation. The remedy under present laws is truly uncertain. The doctrine of Magna Charta was that one for an injury to his person should have a sure, speedy and adequate remedy in the courts. In the administration of the common law system the remedy has proven uncertain, inadequate and anything but speedy. Yet it is said that the common law has become so engrafted into the institutions of the states of America as to stand in the way of the introduction of the workmen's compensation system under which the workman's remedy will be certain, speedy and reasonably adequate.

Other commissions have seemed to favor the placing of the liability directly upon the employer; that is to say, they favor fixing a schedule of compensation to injured workmen and their families, and providing that in each case each employer shall pay the stated sum to the injured employe, or, in

case of his death, to his family, and it is expected (in fact it is the case in New York, where an optional statute was this year enacted) that the employers will then write employers' liability insurance to protect them in such cases, and thereby distribute the burden.

This plan has not met with the favor of your Commission for the reason that it still retains the elements of waste and litigation. It seems to us better, for both employer and employe, that all the money that the employers pay out on account of such cases shall, every cent of it, go to the injured workman.

In adjusting the schedules of contribution we believe that we have erred, if at all, on the side of safety; in other words, that the schedules of premiums fixed in the proposed act will carry the schedule of compensation fixed therein, and probably more. If the act shall be adopted, the Commission will keep books with every industry and every class of industry, and, after sixteen months of such bookkeeping, will be able to determine precisely whether any industry has contributed more or less than was required for its accidents during that year, and the proposed act provides for the refund of sums paid in excess. So that if the rates named in the bill appear high to any employer or class of employers, they should remember that if proved too high, the excess is only a temporary advancement of money. By means of such bookkeeping the Commission will also be able to inform the succeeding legislature of the exact cost of the schedule of compensation to each industry and class of industries. By that means any inequalities discovered in the laying of the burden of contribution will be corrected for future application, and that with increasing accuracy as the years of operation under the act increase; so that, while some employers of the State may feel that the rate of premium fixed in the act is large in their cases, yet it is hoped that the question will be first viewed in its humanitarian aspect and from the standpoint of the public good, and that it will be borne in mind that the rates named in the proposed bill may be changed after sixteen months of operation and demonstration, and that, in the first instance, employers can well afford to pay a rate possibly seeming too large, in view of the fact that any error or inequality will be so soon corrected, since by doing so they may be able to obtain the enactment of the proposed legislation, the effect of which will be, not only to relieve them of the load of litigation and expense which they are now carrying in that connecton, and secure to their workmen aid the families of their workmen sure provision in cases of accidents, but also to restore between employer and workman a feeling of friendship and co-operation which is certain to be reflected in the yearly trial balance.

In closing, the Commission wish to gratefully acknowledge assistance rendered them by numerous citizens, and especially Govnor Teats and Edwin F. Masterson of the Tacoma bar, and George W. Rourke of the Seattle bar.

The legal report of the attorney to the Commission is submitted herewith.

Respectfully,

PAUL E. PAGE,
E. S. JONES,
J. A. FALCONER,
J. P. MCGOLDRICK,
CLARENCE PARKER,
JAS. ANDERSON,
GEO. VON ESCHEN,
F. B. HUBBARD,
PETER HENRETTY,
J. H. WALLACE.

## APPENDIX II.

The provision for a First Aid Fund proposed by the Investigating Commission in its draft of the Workmen's Compensation Act, but which provision the legislature refused to enact into law, was as follows:

"SEC. 10. *Creation of First Aid Fund.*

A fund is hereby created in the State treasury to be known as the First Aid Fund. Into it shall be paid by each employer, on or before the fifteenth day of November, 1911, and each month thereafter, the sum of four cents for each day's work or fraction thereof done by each workman for him during the preceding calendar month or part thereof. Two cents of such four cents shall be deducted by the employer from the pay of the workman.

SEC. 11. *Disbursements of First Aid Fund.*

Upon the occurrence of any injury to a workman, he shall receive from the First Aid Fund proper and necessary medical, surgical and hospital services and compensation for the period of temporary or other disability in the sum of five dollars per week, for not to exceed three weeks, payable at the end of each week. It shall be the duty of the employer to see to it that immediate medical and surgical services are rendered, and transportation to hospital provided, and all charges therefor shall be audited and paid and be payable only by the department out of the First Aid Fund."

## APPENDIX III.

### ALPHABETICAL INDEX TO INDUSTRIES AND EMPLOYMENTS CLASSIFIED IN SECTION 4 OF THE ACT.

| | *Class* | *Pct.* |
|---|---|---|
| Advertising signs (erection) | 5 | .035 |
| Alcohol (manufacturing) | 37 | .020 |
| Ammonia (manufacturing) | 37 | .020 |
| Asphalt (manufacturing) | 30 | .025 |
| Asphalt laying | 8 | .030 |
| Automatic sprinklers (installation of) | 6 | .030 |
| Barrel | 29 | .025 |
| Basket | 29 | .025 |
| Belts, putting up for machinery | 6 | .030 |
| Blast furnaces (construction) | 5 | .040 |
| Blast furnaces (operating) | 18 | .030 |
| Blasting | 6 | .050 |
| Blasting (clearing land) | 6 | .050 |
| Blinds | 29 | .025 |
| Boat building (with scaffolds) | 9 | .045 |
| Boat rigging | 9 | .030 |
| Boilers, covering | 6 | .030 |
| Boilers or engines, steam (installation) | 6 | .030 |
| Boilerworks | 34 | .020 |
| Bottling works | 37 | .020 |

| | Class | Pct. |
|---|---|---|
| Box | 29 | .025 |
| Booming logs or driving ties | 10 | .025 |
| Brass (manufacturing) | 34 | .020 |
| Breakwaters | 3 | .050 |
| Breweries | 37 | .020 |
| Brick (manufacturing) | 35 | .020 |
| Brickettes (manufacturing) | 36 | .020 |
| Brickwork (construction) | 5 | .050 |
| Bridges (construction) | 2 | .065 |
| Bridgework (factories) | 27 | .025 |
| Brooms (manufacturing) | 38 | .015 |
| Brush (working in) | 38 | .015 |
| Building hothouses | 5 | .020 |
| Building material (not otherwise specified) | 31 | .025 |
| Cable railways, with rock work or blasting | 6 | .050 |
| Cable railways, without rock work or blasting | 6 | .035 |
| Canal, other than irrigation or docks with or without blasting | 3 | .065 |
| Candy or cracker (manufacturing) | 39 | .015 |
| Canneries of fruit or vegetables | 32 | .025 |
| Canneries of fish or meat products | 33 | .025 |
| Carpenter work (not otherwise specified) | 5 | .035 |
| Cement (manufacturing) | 31 | .025 |
| Chimneys—metal, concrete or brick | 5 | .050 |
| Cloth (working in) | 38 | .015 |
| Coal mines | 16 | .030 |
| Cold storage plants (refrigeration) | 44 | .020 |
| Cooperage | 29 | .025 |
| Concrete chimneys | 5 | .050 |
| Concrete buildings | 5 | .050 |
| Concrete laying in floors or foundations | 5 | .030 |
| Concrete laying in street paving | 8 | .030 |
| Concrete laying (sidewalks) | 8 | .030 |
| Condensed milk | 40 | .015 |
| Conduits (placing wires in) | 6 | .030 |
| Copper (manufacturing) | 34 | .020 |
| Cordage (manufacturing) | 38 | .015 |
| Cracker or candy (manufacturing) | 39 | .015 |
| Creameries | 40 | .015 |
| Creosoting works | 47 | .025 |
| Dock excavations | 3 | .065 |
| Docks, floating (construction) | 9 | .045 |
| Docks, dry or floating (operation) | 12 | .050 |
| Door | 29 | .025 |
| Dogfish oil (manufacture) | 33 | .025 |
| Dredges (making) | 27 | .025 |
| Dredges (operation) | 12 | .050 |
| Drilling wells | 1 | .020 |
| Drydocks (operation) | 12 | .050 |
| Drydocks (construction) | 9 | .050 |
| Dynamos (installing) | 6 | .030 |

| | Class | Pct. |
|---|---|---|
| Earthenware (manufacturing) | 35 | .020 |
| Electric light and power plants or systems (construction) | 6 | .050 |
| Electric light or power plants or systems (operating) | 13 | .040 |
| Electric railways (with rock work or blasting) | 6 | .050 |
| Electric railways (without rock work or blasting) | 6 | .035 |
| Electric systems not otherwise specified (operation) | 13 | .020 |
| Electrical apparatus (installing systems in buildings) | 6 | .020 |
| Elevators, freight or passenger (construction) | 5 | .050 |
| Electrotyping | 41 | .015 |
| Engraving | 41 | .015 |
| Excavations not otherwise specified | 1 | .040 |
| Engines or boilers, steam (installation) | 6 | .030 |
| Excelsior (manufacturing) | 29 | .020 |
| Ferries | 20 | .030 |
| Fertilizer (manufacturing) | 25 | .025 |
| Fire alarms (installing systems in buildings) | 6 | .020 |
| Fire clay (manufacturing) | 35 | .020 |
| Fire escapes | 5 | .065 |
| Fireproofing of buildings | 5 | .050 |
| Fireproof doors or shutters (erecting) | 5 | .050 |
| Fireworks (manufacturing) | 46 | .050 |
| Floating docks (construction) | 9 | .045 |
| Floating docks (operation) | 12 | .050 |
| Flouring mills | 21 | .020 |
| Foodstuffs (working in) | 39 | .015 |
| Foundries | 34 | .020 |
| Fruits (canning) | 32 | .025 |
| Fruits (working in) | 39 | .015 |
| Furnaces (installation) | 6 | .020 |
| Galvanized iron or tin work | 5 | .050 |
| Garbage works | 25 | .020 |
| Gas works or systems (construction) | 6 | .050 |
| Gas works (operation) | 19 | .030 |
| Glass beveling | 34 | .025 |
| Glass manufacturing | 35 | .020 |
| Glass setting | 5 | .020 |
| Grading, street or otherwise | 8 | .035 |
| Grain elevators (not metal framed) | 2 | .050 |
| Grain elevators (operation) | 21 | .020 |
| Gravel pits | 17 | .040 |
| Gravel bunkers and haulers | 31 | .025 |
| Grease making | 43 | .015 |
| Hardware (manufacturing) | 34 | .020 |
| Heating systems (installation) | 6 | .020 |
| House moving | 4 | .065 |
| House wrecking | 4 | .065 |
| Ice, artificial | 44 | .020 |
| Installations of steam boilers or engines | 6 | .030 |
| Iron (manufacturing) | 34 | .020 |
| Iron or steel frame structures or parts of structures | 5 | .080 |

| | Class | Pct. |
|---|---|---|
| Jetties | 3 | .050 |
| Jewelry (making) | 41 | .015 |
| Keg (manufacturing) | 29 | .025 |
| Lath mills | 10 | .025 |
| Lathing | 5 | .020 |
| Lard (making) | 43 | .015 |
| Laundries | 22 | .020 |
| Lead articles (manufacturing) | 34 | .020 |
| Leather (working in) | 38 | .015 |
| Lime kilns (operation) | 31 | .025 |
| Lithographing | 41 | .015 |
| Locomotive making or repairing | 28 | .025 |
| Logging | 10 | .025 |
| Logging railroads | 7 | .050 |
| Longshoring | 42 | .030 |
| Machinery (installation of, not otherwise specified) | 6 | .030 |
| Machine shops (not otherwise specified) | 34 | .020 |
| Mantel setting | 5 | .030 |
| Marble work | 5 | .050 |
| Marble work (setting) | 5 | .030 |
| Marine railways | 3 | .050 |
| Masts (with or without machinery) | 10 | .025 |
| Metal ceiling work | 5 | .030 |
| Metal work, ornamental in buildings | 5 | .035 |
| Metal smokestacks or chimneys | 5 | .050 |
| Metal (stamping) | 26 | .045 |
| Mills, flour, chop and feed (operation) | 21 | .020 |
| Millwrighting | 2 | .030 |
| Mines (other than coal) | 17 | .025 |
| Moving machinery, boilers, etc. | 4 | .050 |
| Oils (working in) | 39 | .015 |
| Ornamental metal work in buildings | 5 | .035 |
| Packing cases | 29 | .025 |
| Packing houses | 43 | .025 |
| Pail (manufacturing) | 29 | .025 |
| Painting of buildings or structures | 5 | .030 |
| Paper (working in) | 38 | .015 |
| Paper-hanging | 5 | .020 |
| Paper mills | 24 | .020 |
| Paving, brick or block (construction and repair) | 8 | .020 |
| Paving blocks (cutting) | 31 | .025 |
| Peat fuel (manufacturing) | 36 | .020 |
| Photo-engraving | 41 | .015 |
| Pile-driving | 3 | .050 |
| Pile-treating works | 47 | .025 |
| Placing wires in conduits | 6 | .030 |
| Plank road, street or sidewalk (construction) | 8 | .020 |
| Planing mills (independent) | 29 | .025 |
| Plastering | 5 | .020 |

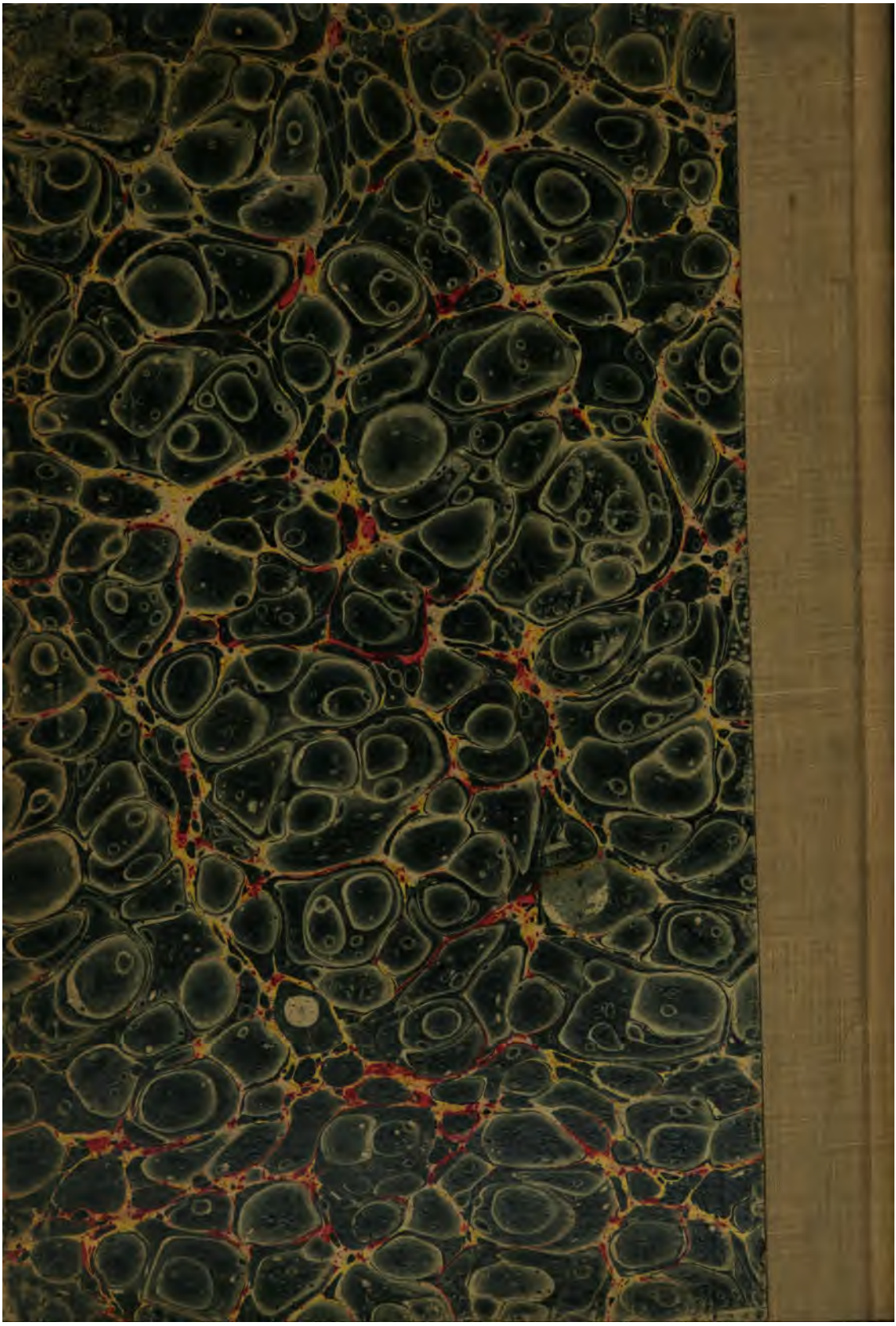
| | Class | Pct. |
|---|---|---|
| Plumbing work (outside) | 5 | .050 |
| Plumbing work (inside) | 5 | .020 |
| Porcelain ware | 35 | .020 |
| Pottery (manufacturing) | 35 | .020 |
| Powder works (manufacturing) | 46 | .100 |
| Power plants, electric (construction) | 6 | .050 |
| Power plants (electric) or systems (operation) | 13 | .040 |
| Power plants (steam) or systems (operation) | 13 | .025 |
| Printing | 41 | .015 |
| Pulp mills | 24 | .020 |
| Quarries | 17 | .040 |
| Railroads, steam or logging (construction) | 7 | .050 |
| Railroads, steam or logging (operation) | 7 | .050 |
| Railroads, interurban electric operation (with third rail) | 14 | .050 |
| Railroads, interurban electric operation (without third rail) | 14 | .040 |
| Railroad car making or repairing | 28 | .025 |
| Refrigerating or cold storage plants (operation) | 44 | .020 |
| Road making (without blasting) | 8 | .020 |
| Road making (with blasting) | 8 | .050 |
| Rolling mills | 18 | .030 |
| Roof work | 5 | .050 |
| Rubber (working in) | 38 | .015 |
| Safe-moving | 4 | .050 |
| Sash | 29 | .025 |
| Saw mills | 10 | .025 |
| Sewers | 1 | .065 |
| Shaft-sinking | 1 | .060 |
| Shingle mills | 10 | .025 |
| Ship building (with scaffolds) | 9 | .045 |
| Ship rigging | 9 | .030 |
| Ship wrighting | 9 | .030 |
| Slate work | 5 | .050 |
| Smelters (operation) | 18 | .030 |
| Soap (making) | 43 | .015 |
| Spars (with or without machinery) | 10 | .025 |
| Sprinklers, automatic (installation) | 6 | .030 |
| Stair building, wooden | 5 | .020 |
| Staves | 29 | .025 |
| Steamboats | 20 | .030 |
| Steam heat, plants or systems (operating) | 13 | .025 |
| Steam heating plants (construction) | 6 | .040 |
| Steam pipes or boilers (covering) | 6 | .030 |
| Steam railroads | 7 | .050 |
| Steam shovels (making) | 27 | .025 |
| Steel (manufacturing) | 34 | .020 |
| Steel frame structures | 5 | .020 |
| Steeples | 2 | .050 |
| Stevedoring | 42 | .030 |
| Stockyards | 43 | .025 |

MAY 24 1914

UNIVERSITY OF MICHIGAN
3 9015 06705 4893

HD
7816
.U7
W2
1912
√
263510

Washington (State)

Laws, statutes, etc.

Workmen's compensation act